

P 131356Z NOV 09
FM AMCONSUL JOHANNESBURG
TO SECSTATE WASHDC PRIORITY 6639
INFO USDOC WASHDC PRIORITY 0054
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C O N F I D E N T I A L JOHANNESBURG 000161

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E.O. 12958: DECL: 11/13/2019
TAGS: [ELAB](#) [ECON](#) [EAID](#) [PREL](#) [PGOV](#) [SF](#) [AMGT](#)
SUBJECT: BUSINESS FRETS THAT UNFRIENDLY LABOR BROKER LEGISLATION
LOOMS

REF: A) 2008 JOHANNESBURG 154; B) 2009 CAPE TOWN 194

CLASSIFIED BY: Doron Bard, Acting Consul General.
REASON: 1.4 (b), (d)

Summary

1. (C) The South African business community is concerned over the impact of a proposed ban or harsh regulations against labor brokers who employ roughly 550,000 South Africans daily. Curtailing labor brokers has become a rallying call for the trade union movement and appears to have gained the support of many in the ruling ANC as a way to curb other labor demands. The Department of Labor (SADOL) has accelerated the debate and hopes to have a policy in place by March 2010. Most U.S. businesses operating in South Africa make use of labor brokers for temporary workers. End summary.

Stressed business community

2. (C) Regional Labor Officer met with Business Unity South Africa (BUSA) Social and Labor Policy Director Vikashnee Harbajan on November 9. A visibly exhausted Harbajan noted that her labor workload had increased tenfold because of the near-constant scramble of COSATU and the labor movement to gain policy influence in the Zuma government. BUSA served as the exclusive representative [lobbyist] of South African business to the National Economic Development and Labor Council (NEDLAC) and as such hashed out labor policy with SADOL, the Congress of South African Trade Unions (COSATU), and FEDUSA (ref A). However, many officials in the Zuma administration were concurrently pursuing other avenues to implement hot button labor issues that would assuage COSATU from larger (and non-labor related) policy aims. Nowhere was this more evident than in the Zuma government's attempt to regulate or ban labor brokering.

SADOL moves quickly

3. (C) Harbajan said that current ANC pledges to regulate or ban third-party contracted labor, known as labor brokering, had reached a fever pitch. The ANC-dominated Ministry of Labor and Parliamentary Portfolio Committee on Labor had accelerated the campaign to try to cover up the labor movement split over the issue. FEDUSA and the International Labor Organization (ILO)

had come out in support of improving regulation of, rather than eliminating, the labor brokering industry. According to Harbajan, this left COSATU determined to see some type of policy, and Minister of Labor Mdladlana was doing everything he could to please them. The Minister needed COSATU support as his ministry had shrunk. President Zuma had spun off non-core functions, including skills development, to the newly created Ministry of Higher Education and Development (ref A).

14. (C) Harbajan and her colleagues expressed great concern that Minister Mdladlana's view waffled by the day. He told NEDLAC that he would not ban labor brokers, but then publicly pledged to do so. He was even stronger in supporting a ban when speaking with COSATU. BUSA predicted the Minister would table draft legislation by early December as a strategic move. This would occur just before most of the country broke for its month long 'Festive Season' holiday and would limit informed debate and discussion. The Minister would then expect the policy to be negotiated and enacted just after everyone returned from break. BUSA hoped that the Minister did not table an outright ban on labor brokers as such a ban 'would be in bad faith' based on his statements to NEDLAC. That said, the Minister was under enormous pressure from COSATU and the Parliamentary Portfolio Committee on Labor to propose a ban. If the Minister tabled a full ban, BUSA said it would be forced to withdraw from the NEDLAC process immediately. (Note: Harbajan also quietly said BUSA was gearing up to challenge a full ban in the South African Constitutional Court if needed. End note.)

Poorly drafted legislation no different than a ban

15. (C) BUSA and its members were 'very concerned' that draft legislation from SADOL was equivalent to a ban. The Minister was unwavering in his insistence that brokers be heavily regulated. He told NEDLAC that clients and employers would assume full and joint liability for brokered workers under South African labor law. (Note: Joint liability means that a worker could take both the client and broker to court alleging they violated labor law. The employee could also claim benefits from both. End note.) BUSA expressed the belief that this would have the same effect as a ban and would shut down an industry that employed 500,000 to 600,000 workers daily. BUSA, FEDUSA, and the ILO had proposed that existing and strong labor laws be enforced and that the Ministry create a registry of labor brokers. This would allow them to keep tabs on the industry. BUSA said that joint liability might be an option for 'vulnerable' sectors such as agriculture.

16. (C) Complicating the labor brokering issue was the new role of the Parliamentary Portfolio Committee on Labor. The long dormant committee had taken up the issue with a vengeance and was very much 'in bed with COSATU.' August hearings (ref B) had seen Committee Chair Lumka Yengeni shutting down educated debate in favor of emotional outbursts. SADOL pandered to the committee and no party offered any studies on the proposed economic impacts of a ban or other regulations. BUSA is very short-staffed and Harbajan lamented that the business community had not been able to muster the response it should. She also fretted that BUSA would not have time to do so before 2010 debates on the issue. Harbajan said that while some bad brokers did exist, particularly in the agricultural sector, many legitimate economic sectors also relied on brokered labor, including the South African government. The Gauteng government (Johannesburg and Pretoria) had responded to the debate on brokers by eliminating brokered nurses. This had amplified an already critical sixty percent staff shortage in public hospitals.

SADOL also tagging on other anti-business amendments

17. (C) Harbajan said BUSA was also worried that new SADOL Director General Jimmy Manyi was tagging onto the momentum surrounding brokers and pushing through concurrent amendments to the EQployment Equity Act. Both Manyi and the Minister had

rallied COSATU and Parliament behind changes to employment equity legislation. Companies found in non-compliance with South Africa's strict equity laws would face fines ranging from one to four percent of total profits. Studies by both SADOL and BUSA had found that almost no company in South Africa was in compliance with all provisions of complex equity legislation. Harbajan agreed that business needed to do better. However, she and BUSA see Manyi's amendments as yet another legislative hindrance to doing business in South Africa. While SADOL had rarely enforced equity law in the past (with fixed fines), it was very clear that Manyi planned immediate and multiple prosecutions.

Comment

18. (C) Contracted (brokered) workers are present in all sectors of the South African economy because the difficulty of firing workers in South Africa (along with other stringent labor laws) has created a large demand for labor brokers to supply workers to firms that don't want to take on permanent staff. Many labor brokers are legitimate while others are suspect. The trade union movement has not backed down from its insistence that labor brokers be banned or heavily regulated and that view is backed by strong but uninformed support from SADOL and Parliament. Any proposed ban or regulation will have consequences for U.S. business. While it is still too early to tell, the Department of Labor appears determined to push through regulations in February with as little debate as possible. The Embassy, on behalf of the American Chamber of Commerce (AmCham), has asked that the Minister of Labor meet with AmCham to discuss the issue.

BARD